

ATTACHMENT A:

***Texas PUC Rulemaking Proceeding to Address
Notification Issues Arising from Changes in
Preferred Telecommunications Utilities.***

PROJECT NO. 26131

PUC RULEMAKING PROCEEDING	§	
TO ADDRESS NOTIFICATION	§	
ISSUES ARISING FROM CHANGES	§	PUBLIC UTILITY COMMISSION
IN PREFERRED	§	
TELECOMMUNICATIONS	§	OF TEXAS
UTILITIES	§	

**ORDER ADOPTING AN AMENDMENT TO §26.130, RELATING TO SELECTION OF
TELECOMMUNICATIONS UTILITIES, AS APPROVED AT THE
SEPTEMBER 12, 2002 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to §26.130, relating to Selection of Telecommunications Utilities, with changes to the proposed text as published in the July 26, 2002 *Texas Register* (27 TexReg 6606). The amendment addresses carrier responsibility during the change order process when a customer selects a different local service provider (LSP) or primary interexchange carrier (PIC). Specifically, the amendment requires an old PIC to discontinue billing and requires the new PIC to initiate billing upon a change of PIC. In addition, the amendment clarifies how the LSPs exchange information about the change of provider(s) with other LSPs and PICs. The purpose of the amendment is to protect customers from billing errors arising from a PIC failing to discontinue billing for presubscribed services after a customer requests a change in the PIC, or from a PIC terminating the presubscribed service calling plan when the customer requests a change in LSP but no change in PIC. This section is adopted under Project Number 26131.

The commission received comments on the proposed amendment from Americatel Corporation (Americatel); VarTec Telecom, Inc., Excel Communications, Inc. and eMeritus

Communications, Inc. (collectively "VarTec"); Sprint Communications Company LP, United Telephone Company of Texas, Inc. d/b/a Sprint and Central Telephone Company of Texas d/b/a Sprint (collectively "Sprint"); the Office of the Attorney General of Texas (OAG); Sage Telecom of Texas, LP (Sage); Birch Telecom, Ltd., LLP (Birch); Office of Public Utility Counsel (OPC); Southwestern Bell Telephone L.P., d/b/a Southwestern Bell Telephone Company (SWBT); Verizon Southwest (Verizon); AT&T Communications of Texas, LP (AT&T); Texas State Telephone Cooperative, Inc. (TSTCI); and the Alliance for Telecommunications Industry Solutions (ATIS).

A public hearing on the amendment was held at commission offices on August 22, 2002 at 9:30 a.m. Representatives from Sprint; OAG; Sage; Birch; OPC; SWBT; Verizon; AT&T; and TSTCI attended the hearing and provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

Specific comments to rule language

§26.130(m)(1), Definitions

Section 26.130(m)(1) defines terms used in subsection (m). Verizon and SWBT proposed language to revise the rule's terminology for local exchange carrier (LEC), which would include the terms competitive local exchange carrier (CLEC) and incumbent local exchange carrier (ILEC). Verizon and SWBT proposed changing "local exchange company" to "local service provider" (LSP) in order to remain consistent with the commission's Draft *CLEC-To-CLEC and*

CLEC-TO-ILEC Migration Guidelines, issued July 29, 2002 in Project Number 24389, as that project and this rulemaking address issues that arise in CLEC to CLEC and CLEC to ILEC customer migrations.

The commission agrees with Verizon and SWBT that industry-standard terminology should be used to the extent possible in order to avoid unnecessary confusion, and amends proposed subsection (m)(1)(A)-(C) to replace "LEC" with "LSP."

§26.130(m)(1)(D)

Section 26.130(m)(1)(D) defines preferred interexchange carrier. AT&T recommended that the commission use existing industry-standard terms in this rule to the extent possible, and suggested revising the proposed rule language to use the term "primary interexchange carrier," which is also defined in §26.5(158) of this title (relating to Definitions) rather than "preferred interexchange carrier." In addition, Verizon and SWBT proposed language to clarify that the PIC definition encompasses both interLATA and intraLATA toll carriers.

The commission agrees with AT&T that industry-standard terminology should be used to the extent possible in order to avoid unnecessary confusion, and amends proposed subsection (m)(1)(D)-(F) to use "primary" rather than "preferred." The commission agrees with Verizon and SWBT that the PIC definition set forth in subsection (m)(1)(D) include both interLATA and intraLATA toll carriers, and modifies this section accordingly.

§26.130(m)(2)(A), Contents and delivery of notice required by paragraphs (3) and (4) of this subsection

Section 26.130(m)(2)(A) specifies the contents of the notices provided by the LSPs. AT&T suggested including in the minimum list of notice requirements the following data elements: Customer Type Indicator; Carrier Identification Code; Jurisdictional Indicator – identifying whether the PIC is interLATA or intraLATA; and Service Address – to enable determination of applicable taxes/fees. AT&T stated that these elements are necessary for a carrier to effectively execute the installation or removal of an end user from its PIC and billings.

§26.130(m)(2)(C) as proposed, §26.130(m)(2)(A)(iii) as adopted

Proposed §26.130(m)(2)(C), adopted as §26.130(m)(2)(A)(iii), requires that notices contain "any other information necessary to execute the preferred carrier change request." AT&T stated that it believes that this "catch-all" phrase is intended to require the timely transmission during the interim of all minimum customer account information an interexchange carrier (IXC) may reasonably need, as reflected in the industry standard guidelines for a particular transaction. AT&T requested that the commission confirm this interpretation.

The commission agrees with AT&T that all information necessary to implement a change should be transmitted between carriers. However, the commission declines to specify additional detailed information in the rule because different companies' transactions may necessitate different minimum information.

§26.130(m)(3), Notification requirements for change in PIC only

Proposed §26.130(m)(3) requires the LSP to notify the old and new PIC of the PIC change within five business days of executing the change and requires the old and new PICs to discontinue and initiate billing respectively within five business days of receiving notice.

Birch and the OAG requested clarification of the term "executing the change." The OAG suggested amending subsection (m)(3) to clarify that "executing the change" occurs in the switch. Similarly, OPC commented about the need to clarify what event starts the five day period for the LSP to notify the old PIC.

The commission agrees with the parties and adopts amended language in subsection (m)(3)(A) to clarify that the "change execution" triggers the notice timelines. In addition, the commission defines "change execution" in new subsection (m)(1)(G).

SWBT stated that the rule should make clear that carriers can recover costs associated with providing notification under subsection (m)(3). Verizon and SWBT proposed language to reflect that carriers be allowed to "apply its applicable contract or tariff rates." At the Public Hearing, AT&T opposed this proposal to include language to assess fees per agreements or tariffs. AT&T stated that inclusion of such language would be a material deviation from what was published, and would require the commission to republish the rule for comment. In addition, AT&T

contended that such notice fees are already governed by existing agreements, separate and apart from the rule, and in the long term should be viewed as part of the cost of doing business.

The commission does not believe a need exists to specify that carriers may recover their costs because the rule does not prohibit carriers from recovering costs associated with the notification and because existing agreements may already address applicable fees. The commission recognizes that tariffs and/or other arrangements may be in place between carriers and the commission does not intend for this rule to modify them.

Sprint stated that its long distance division believes that the proposed rule has the potential to enhance its ability to collect toll usage from consumers only if all CLECs and ILECs participate in the notification process. Sprint stated that its local telephone division cannot comply with the five day requirement as their current process takes 14 calendar days, and that the five day mandate would require Sprint's local telephone division to enhance its systems at an estimated cost of \$280,000 that would take at least 90 days to complete. Therefore, Sprint suggested that the rule be revised to reflect a 14 calendar day requirement instead of a five business day notification requirement. During the hearing, Sprint explained that its 14 day notice process and associated cost concerns pertain only to the notification of a change in PIC. In supplemental comments filed after the hearing, Sprint clarified that it intends to migrate to a five day notification period. However, both Sprint and AT&T recommended that the commission allow providers time to implement process changes required by the new rule. During the hearing, AT&T suggested that the rule be effective 90 days after publication or January 1, 2003.

The commission agrees with AT&T and Sprint that it is reasonable to allow parties additional time to implement the notice exchange process. Therefore, compliance with subsection (m) will be required by January 1, 2003. New paragraph (7) specifies this compliance date.

AT&T and TSTCI expressed concern that LSPs would not be able to contact an IXC or agent with whom there is no previously established relationship within the required timeframe. TSTCI stated that, given the past experience of small ILEC business office managers, it would be difficult, if not impossible, for a small ILEC to comply with the proposed five business day notification requirement. During the hearing, TSTCI clarified that the small ILECs need help in obtaining IXC contact information in order to comply with the rule, and are seeking a more streamlined process for getting information to the IXC. TSTCI explained that it has used the commission's utility directory database on the commission's website to obtain IXC contact information, however problems arise during the process of communicating the PIC change with the IXC itself.

To address AT&T and TSTCI's concerns, the commission adopts new subsection (m)(2)(B), which allows an LSP to comply with its notification obligation by delivering notice to the PIC using publicly available contact information maintained by the commission, if the LSP does not otherwise have a business relationship with that PIC enabling the LSP to have the necessary contact information.

§26.130(m)(3)(A) and (B)

Section 26.130(m)(3)(A) and (B) as proposed required the new PIC to connect service and the old PIC to disconnect service. AT&T explained that IXCs do not either connect or disconnect service, but instead initiate or terminate billing, and proposed that proposed subsection (m)(3) be revised to reflect this. AT&T proposed revisions to comport with its practice of initiating billing for presubscribed services, and to delete language referring to service connection. AT&T proposed revisions to comport with its practice of discontinuing billing for presubscribed services and continued billing for transactional usage, and to delete language referring to service disconnection.

Similarly, VarTec proposed that subsection (m)(3)(B) be reworded to clarify the commission's intent. VarTec noted that the PIC is maintained at the LEC switch and that the PIC and the term "disconnect service" would require the IXC to block traffic to the customer. In addition, VarTec commented that since the PIC change occurs in the switch, the old PIC does not need to take any action to "disconnect service," since future 1+ calls should be routed to the new PIC. Furthermore, VarTec stated that the amendment assumes that the customer intends to stop using all services of the old PIC. VarTec emphasized that requiring the old PIC to disconnect could cause unintended interruption of service. VarTec suggested removing the requirement to "disconnect service." For reasons similar as above, VarTec held that the old PIC should not be required to stop billing upon selection of a new PIC. VarTec stated that the requirement to discontinue billing should be clarified or removed.

The commission agrees with AT&T and VarTec that the PIC's action should be characterized as initiating billing or discontinuing billing for presubscribed services. Therefore, the commission amends proposed subsection (m)(3)(A)-(B) accordingly.

§26.130 (m)(4), Notification requirements for change in PLEC when one PLEC is not switched based, as proposed

For a change in LSP where one of the LSPs is not switch-based, subsection (m)(4) as proposed required the:

- (A) new LSP to notify old LSP of change in LSP and identity of new PIC within five business days of LSP selection;
- (B) new LSP to notify new PIC of PIC selection within five business days of receiving notice; and
- (C) old LSP to notify old PIC of change in LSP, identity of new LSP, and whether old PIC service has been unsubscribed within five business days of receiving notice.

AT&T, Verizon and SWBT proposed that the commission delete subsection (m)(4) and adopt subsection (m)(5), relating to notification requirements for changes in facilities-based LSPs, with revisions. Verizon and SWBT stated that the commission should adopt one rule that applies to all LECs, whether they are switch-based or not. According to SWBT, because LECs might be switch-based in one exchange but not another, different rules would require LECs to maintain information on what LEC is switch-based, and where, increasing the potential for confusion and mistakes in complying with the rule. SWBT stated that for the proposed rule language to be

effective, the commission would need to implement an additional rule requiring all LECs to inform all other LECs whether the service they provide is switch-based or switchless in every Texas exchange. SWBT claimed that some LECs, including SWBT, would be unable to comply with the proposed subsection (m)(4) absent extensive redesign of their systems. Such a redesign would delay the time in which the rule could be implemented, and require those LECs to incur substantial costs with no benefit to the customer.

The commission agrees with the parties that separate processes are not needed for switch-based and switchless LSPs. Therefore, the commission deletes subsection (m)(4) as proposed.

Timing and execution in subsection (m)(4), as proposed

VarTec, Sage and AT&T commented on potential timing problems with using LSP selection as the triggering event for providing notification. Sage and AT&T commented that the triggering event for the timing of notifications should be clarified. VarTec proposed that timing requirements be based on the execution of the change instead of selection of a new provider. Sage recommended that the trigger for notifications should be the date the old LSP receives the disconnect order. In addition, Sage suggested adjusting timelines if notification takes longer than five days (from the selection of the new LSP). AT&T recommended that the timing for the obligation of the LEC to provide notice should be keyed off of the date the LEC either completed the underlying provisioning and related activities in the serving switch, or the date the LEC received notice of the completion of such activities from the network service provider that operates the serving switch.

The commission addresses these issues in the discussion of subsection (m)(5) as proposed, (m)(4) as adopted.

Notification between LSPs in subsection (m)(4), as proposed

AT&T contended that the rule should only govern the transmission of information between LECs and IXC's given the complex and various CLEC to CLEC transition scenarios. AT&T stated that LEC to LEC notice requirements are governed by the CLEC to CLEC Migration guidelines in Project Number 24389 and/or by the Local Service Ordering Guidelines (LSOG) requirements that have generally been incorporated into the interconnection arrangements between ILECs and CLECs. During the hearing, AT&T clarified its concern that the rule's notice requirements may be duplicative of requirements in the LEC to LEC migration guidelines in Project Number 24389. In addition, AT&T expressed concern that, in a customer migration scenario where both LECs are unbundled network element platform (UNE-P) providers, the notice is issued by the network service provider that executes the change in the switch, and not the UNE-P providers. AT&T stated that for UNE-P providers, the separate requirement that the LECs notify each other may result in the network service provider asserting that there are payment obligations not otherwise required by the interconnection agreements.

The commission deletes subsection (m)(4) as proposed. AT&T also raised similar concerns in the comments to subsection (m)(5) as proposed. The commission addresses AT&T's comments in the discussion on that subsection.

Requiring the new LSP to provide all notifications in subsection (m)(4) as proposed

VarTec stated that having both proposed subsection (m)(4)(C) and (m)(5)(C) would require two separate notification procedures – one for acquiring customers and one for migrating customer to another service provider. VarTec commented that proposed subsection (m)(4)(C) unnecessarily requires LECs to duplicate existing industry procedures. Instead, VarTec suggested that the new LSP provide all of the proposed notifications. AT&T disagreed with VarTec's suggestion that the new LSP provide notice to all IXCs. According to AT&T, this is not consistent with current industry practice and suggested retaining the approach provided by the rule.

The parties raised similar concerns with regard to subsection (m)(5) as proposed. The commission addresses the parties' comments in the discussions on that subsection.

SWBT stated that proposed subsection (m)(4)(A)(ii) should be deleted, as the old LSP does not need this information for billing or any other purpose. Verizon also proposed deleting this requirement. SWBT stated that, because the old LSP has no need for this information, its disclosure violates the prohibitions against disclosure of customer proprietary network information ("CPNI"). Moreover, this provision is unnecessary because the proposed rule also requires the new LSP to inform the new PIC that it has been selected to provide long distance services to the customer within five business days of the customer's request. SWBT claimed that having both the old and new LSP notify the PIC at potentially different times would add confusion and further increase the risk of inaccurate billing.

SWBT stated that proposed subsection (m)(4)(C)(ii) should be deleted because it is unnecessary. According to SWBT, knowing the identity of the new LSP is not necessary to inform the old PIC whether it remains the customer's PIC or not. The new PIC is specifically informed that it is the customer's new PIC by the new LSP under subsection (m)(4)(B). In addition, it raises potential CPNI problems, because if the customer does not maintain the old PIC as its PIC, the old PIC has information that is not used in the provision of telecommunications services potentially in violation of 47 U.S.C. §222.

AT&T stated that proposed subsection (m)(4)(c)(ii)-(iii) is unnecessary, inconsistent with Ordering and Billing Forum (OBF) Subscription Committee industry standards, and could cause customer confusion and inconvenience.

SWBT recommended that proposed subsection (m)(4)(C)(iii) be deleted because it is unnecessary and would be extremely difficult for some carriers to implement. SWBT suggested that instead, the commission adopt present industry standards that simply require the new LSP to notify the new PIC. In addition, SWBT stated that the most cost effective and expedient method is to require all carriers to comply with the present OBF guidelines.

As stated earlier, the commission deletes subsection (m)(4) as proposed, therefore comments regarding deletion of subdivisions of subsection (m)(4) do not need to be addressed.

§26.130(m)(5) as proposed, §26.130(m)(4) as adopted

For a change in LSP where both the old and new LSPs are switch-based, subsection (m)(5) as proposed (subsection (m)(4) as adopted) requires the:

- (A) new LSP to notify old LSP of change in LSP within five business days of LSP selection;
- (B) new LSP to notify new PIC of PIC selection within five business days of receiving notice; and
- (C) old LSP to notify old PIC of PIC unsubscription within five business days of receiving notice.

SWBT stated that this proposed rule mirrors OBF guidelines, is consistent with industry standards and current practice, and implementation could be accomplished quickly. SWBT maintained that, in exchanging billing record information, it is irrelevant whether an old or new LSP is switch-based, because exchanging billing recording information does not involve the actual PIC change, but how information is transmitted between old and new carriers. SWBT stated that the proposed rule allows for the exchange of all information necessary for PICs to accurately bill the customer. SWBT stated that this proposed rule language does not raise CPNI concerns, because the party with a legitimate need to share the information does so. Therefore, SWBT and Verizon recommended that the commission adopt proposed subsection (m)(5), with modifications, for all migrations, regardless of whether or not the new or old LSP is switch-based. SWBT and Verizon proposed modifications throughout the section to reflect the use of the term "LSP" instead of "PLEC," and to reflect the deletion of proposed subsection (m)(4).

The commission agrees with the parties that for the purposes of clarity and simplicity, and in order to most effectively clarify carrier responsibility during the records exchange process, one rule should apply to all carriers regardless of facilities ownership. Therefore, the commission merges proposed subsection (m)(4)-(5) into the new subsection (m)(4), which applies to all carriers, regardless of facilities ownership. The commission also agrees that the term "LSP" should replace "PLEC."

Deletion of subsection (m)(4) and (5) as proposed

Birch recommended deleting subsection (m)(4) and (5) as proposed because they duplicate existing efforts. Although, if the commission implements subsection (m)(4), Birch suggested that the ILEC should provide notification of the change of LSP and that the new LSP should notify the new PIC and the old LSP should notify the old PIC. Birch further suggested that the ILEC could develop an unbundled network element (UNE) based Customer Account Record Exchange (CARE) offering whereby the ILEC provides the notifications on the CLEC's behalf. With respect to non-ported changes in LSPs, Birch recommended that the commission consult industry standards groups such as the CLEC User Forum and the OBF. Birch stated that normal order activity creates awareness between the old and new LECs. However, at the public hearing, Birch explained that its comments assumed that the amendment would require a new notification procedure in addition to any existing procedure that may already provide the required notices. Accordingly, Birch expressed that it concurred with the amendment, so long as Birch did not have to provide a notice in addition to its existing procedures. Birch further stated that it had no preference between subsection (m)(4) and (m)(5).

The commission notes that proposed subsection (m) would not require duplication of existing efforts. The commission declines to require the ILEC to provide notice of a change of LEC since this would conflict with industry standards. Subsection (m) in no way requires an LSP to use a specific notification method, such as CARE, or prohibits a carrier from arranging with another carrier to provide notices on its behalf. If an LSP already makes the required notifications, the LSP does not have to initiate another process. However, the commission believes in using a standardized process, and strongly encourages carriers in Texas to use a single standard.

Timing and execution in subsection (m)(5) as proposed, subsection (m)(4) as adopted

VarTec noted that timing requirements were inconsistent between a PIC only change and changes of both PIC and LSP. VarTec stated that events occurring after LSP selection, but before order completion could change the content of the required notice. Furthermore, complex orders may require more than five business days for completion. VarTec, SWBT and Verizon suggested that timing requirements be based on the execution of the change instead of selection of a new provider. In addition, AT&T stated that the LEC to IXC notice obligations should commence upon completion of the provisioning and related work in the switch, or, where the LEC is not the switch provider, upon its receipt of notice that such activities have been completed.

The commission understands VarTec, SWBT and Verizon's concern that compliance with the rule could be difficult because of complications of providing notification from the date of carrier selection. Therefore, as stated previously, the commission concurs with the parties that the notice timelines should be triggered by the date of the execution of the change in the switch, and adopts amended language in subsection (m)(5)(A)-(B) as proposed, (m)(4)(A)-(B) as adopted, to clarify that the "change execution" triggers the notice timelines.

AT&T contended that the event starting the timeline by which a LEC must provide notice to an IXC should be clarified to ensure that notice is required only after the change in carriers has been completed in the switch serving the end user and the serving LEC has received notice of same. According to AT&T, changes in service are generally implemented at the local switch serving the end user customer, and only the switch provider will know with certainty when a change is executed. Therefore, AT&T recommended that the timing for the obligation of the LEC to provide notice should be keyed off of the date the LEC either completed the underlying provisioning and related activities in the serving switch, or the date the LEC received notice of the completion of such activities from the network service provider that operates the serving switch.

The commission agrees that the notice timelines should be triggered by the date of the execution of the change in the switch, and adopts amended language in subsection (m)(5)(A)-(B) as proposed, subsection (m)(4)(A)-(B) as adopted, to clarify that the "change execution" triggers the notice timelines. In addition, the commission defines "change execution" in new subsection (m)(1)(G) to address timing differences between switch-based and switchless LSPs. Defining

"change execution" as the date the LSP has knowledge of the change accommodates both switch-based and switchless LSPs. Notice timelines would start on the date of the change for switch-based LSPs and on the date of receiving notice of the change for switchless LSPs.

Notification between LSPs in subsection (m)(5) as proposed, subsection (m)(4) as adopted

AT&T contended that the rule should only govern the transmission of information between LECs and IXC's given the complex and various CLEC to CLEC transition scenarios. However, AT&T proposed rule language to require the old LSP to act on notification to the old PIC upon receipt of notice pursuant to the migration guidelines established in Project Number 24389 or "other mechanisms implemented to ensure notice." AT&T stated that LEC to LEC notice requirements are governed by the CLEC to CLEC Migration guidelines in Project Number 24389 and/or by the LSOG requirements that have generally been incorporated into the interconnection arrangements between ILECs and CLECs. During the hearing, AT&T clarified its concern that the rule's notice requirements may be duplicative of requirements in the LEC to LEC migration guidelines in Project Number 24389. In addition, AT&T expressed concern that, in a customer migration scenario where both LECs are UNE-P providers, the notice is issued by the network service provider that executes the change in the switch, and not the UNE-P providers. AT&T stated that for UNE-P providers, the separate requirement that the LECs notify each another may result in the network service provider asserting that there are payment obligations not otherwise required by the interconnection agreements.

The commission agrees that the rule should avoid creating a new or duplicative records exchange process. The commission only requires that LSPs provide certain minimum information to other carriers. Subsection (m) in no way requires an LSP to use a specific notification method (such as CARE) or prohibits a carrier from arranging with another carrier to provide the notices on its behalf. Therefore, if an LSP already provides any of the subsection (m) notifications (pursuant to an existing guideline or otherwise), then the LSP has met the requirements for those notifications and need not create a duplicate or new process to provide those notifications again. In addition, the commission recognizes that such notification may currently occur pursuant to existing agreements between carriers and the commission does not intend for the rule to modify those agreements or create additional requirements if such notice currently occurs. However, the commission believes in using a standardized process, and strongly encourages carriers in Texas to use a single standard.

Requiring the new LSP to provide all notifications in subsection (m)(5) as proposed, subsection (m)(4) as adopted

VarTec stated that proposed subsection (m)(5)(C) would require two separate notification procedures – one for acquiring customers and one for migrating customer to another service provider. VarTec commented that subsection (m)(5)(C) unnecessarily requires LECs to duplicate existing industry procedures. Instead, VarTec suggested that the new LSP provide all of the proposed notifications. AT&T disagreed with VarTec's suggestion that the new LSP provide notice to all IXC's. According to AT&T, this is not consistent with current industry practice, and AT&T suggested remaining with the approach provided by the rule.

The commission disagrees that the rule should be revised to require the new LSP to provide all notifications, as this is not consistent with current industry practices. Instead, the commission agrees with AT&T and retains the published rule language.

§26.130(m)(6) as proposed, §26.130(m)(5) as adopted

Section 26.130(m)(6) as proposed, §26.130(m)(5) as adopted, requires a new PIC to initiate billing. As proposed, subsection (m)(6) also required the new PIC to connect service.

Birch supported subsection (m)(6) as proposed. AT&T stated that IXCs neither connect or disconnect service, but rather initiate or terminate billing, and proposed revisions to the rule accordingly.

The commission agrees with AT&T that it is more appropriate to describe the PIC's actions as an initiation of billing for presubscribed services. Therefore, the commission amends proposed subsection (m)(6) as proposed, subsection (m)(5) as adopted, accordingly.

§26.130(m)(7) as proposed, §26.130(m)(6) as adopted

Section 26.130(m)(7) as proposed, §26.130(m)(6) as adopted, requires the old PIC to discontinue billing after:

(A) the old PIC receives notice of unsubscription from the PIC

- (B) the old PIC receives notice of a change in switch-based LSPs, but does not receive notice of its selection as the new PIC.

As proposed, subsection (m)(7) required the PIC to disconnect service.

VarTec suggested removing the requirement to "disconnect service." AT&T stated that IXCs neither connect or disconnect service, but rather initiate or terminate billing, and proposed revisions to the rule accordingly.

The commission agrees with VarTec and AT&T that it is more appropriate to describe the PIC action in this instance as discontinuing billing, specifically for presubscribed services, and amends subsection (m)(7) as proposed, subsection (m)(6) as adopted, accordingly.

VarTec stated that the old PIC should not be required to stop billing upon selection of a new PIC because no "1+" calls would be routed to the old PIC's service for billing. VarTec stated that the requirement to discontinue billing should be clarified or removed, because a customer could still use VarTec to make dial-around long distance calls and under that circumstance, it would be appropriate for VarTec to bill the customer.

The commission agrees with VarTec that the old PIC should not be required to stop billing for non-presubscribed services. Although routing of "1+" calls to the new PIC after a PIC change execution prevents the old PIC from assessing measured use charges, this does not prevent old PICs from charging monthly recurring fees. Accordingly, the commission clarifies that the old

PIC must discontinue billing for presubscribed services, but may bill the customer for dial-around type calls or other services that the customer orders and uses.

Sage noted that conversion may take longer than ten days, but subsection (m)(7) as proposed, subsection (m)(6) as adopted, requires disconnection within five business days. Therefore, Sage recommended that the disconnection date be contingent upon the actual conversion date rather than upon notice of the change execution.

The commission agrees that the "disconnection" date should be modified. Therefore, the commission changes the triggering event from the customer's selection of the new PIC to the change execution or conversion date.

AT&T proposed revisions to reflect current industry practices, where the old IXC receives direct notification that the LEC has changed, but gets no direct notice from the old LEC as to the status of the PIC. According to AT&T, under OBF standards and its current company practices, the old IXC is directed to assume that, if it has not been notified that it is the new IXC within a reasonable period of time after the notice of change in LECs, it is no longer the IXC and it is to discontinue billing for presubscribed services effective as of the date of the switch. AT&T explained that in all cases, the old IXC does not discontinue billing within five business days because of billing cycle issues. AT&T stated that its experience has been that it is reasonable to wait for 30 days before ceasing the bill process. AT&T requested that the rule or the preamble allow this practice to continue.

The commission understands AT&T's concern that the billing cycle may not complete until 30 days after the customer has changed PIC providers. However, the commission believes that amendments to subsection (m)(2)-(3) as proposed and subsection (m)(5) as proposed, (m)(4) as adopted, which require that notice be delivered contingent upon the conversion date in the switch, address the concern that more than five business days may be necessary. The rule as amended requires that the PIC cease billing the end user for presubscribed services as of the date the PIC change is made in the LEC switch. The old PIC must still submit the final bill for presubscribed services that the customer had ordered before the PIC change. The rule does not specify the timeframe in which the old PIC's billing cycle completes for the customer's final bill, but the customer should not incur charges for presubscribed services from the old PIC after the date the PIC change execution in the switch. However, the commission believes that to avoid prematurely discontinuing billing for a service the customer wishes to keep, the timeframe for the old PIC to implement the change in their billing system should be extended from five to seven business days, and amends the rule accordingly.

Verizon contended that the commission does not need to prescribe a time frame for the old PIC to disconnect service, and therefore the proposed subsection is not necessary. Verizon stated that it believes that the cause of the problem of customers facing continued billing from PICs is lack of notice to the PIC, or a failure of the old PIC to respond to the notice. Verizon maintained that if a time frame for old PIC disconnects is necessary, it should be developed by an industry forum such as the OBF. According to Verizon, current OBF guidelines that require the former PIC to disconnect a customer if it does not receive confirmation that it is the new PIC address this issue.

The commission disagrees with Verizon that it is unnecessary to set a time frame for the old PIC to discontinue billing the customer. The commission believes that this requirement is necessary to clarify carrier responsibility when discontinuing billing, and affords greater customer protection against continued billing for services that the customer cancelled.

Other rule related issues

Five day maximum for carrier changes

The OAG recommended emphasizing that five business days is the maximum time allowed for making the carrier changes. The OAG suggested this could be accomplished by adding the phrase "a maximum of" before each instance of "five business days."

The commission finds that the current language already clearly states that the time limits specified in subsection (m) are mandatory. Therefore, the commission finds no need to include additional "maximum" language.

Use of current process

Sage commented that it would prefer to maintain the processes it currently uses as much as possible.

The commission notes that subsection (m) does not require a carrier to duplicate an existing process for the purpose of complying with subsection (m). To the extent that a carrier's existing processes comply with subsection (m), the carrier has already satisfied its obligations under subsection (m). Moreover, the commission based the subsection (m) requirements on existing industry standards, which should minimize a carrier's need to change its processes.

Double billing and enforcement

OPC commented that the proposed rule authorizes the old PIC to bill for two calendar weeks beyond the earliest date the new PIC can bill the customer, resulting in double billing. OPC also expressed that enforcement language should be included. At the public hearing, OPC suggested adding an additional paragraph specifying that failure to discontinue billing as required in subsection (m) constitutes an unauthorized charge under Substantive Rule §26.32(f) of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")).

AT&T objected to OPC's proposal to include language in the proposed rule that would impose administrative penalties on companies that failed to comply with the rule. AT&T stated that inclusion of such language would be a material deviation from what was published, and would require the commission to republish the rule for comment. In addition, AT&T maintained that such language is unnecessary because the commission has general penalty jurisdiction anyway. Regarding OPC's concerns that customers would be double-billed during the carrier transition, at the hearing, AT&T clarified that, if the commission adopted the switch execution date as the

trigger for the notice exchange between carriers, then billing from the old PIC and billing from the new PIC would hinge on that switch change date.

SWBT stated that processes developed by the Ordering and Billing Forum and currently used by carriers such as SWBT provide for the timely transmission of information between carriers sufficient to protect customers from double billing.

The commission finds that proposed §26.130(m), along with existing provisions in the commission's rules, the Public Utility Regulatory Act (PURA), and industry standards, already address OPC's double billing concerns, making any additional changes unnecessary. First, proposed §26.130(m) does not allow both the new and old PICs to charge for presubscribed service during the same time. Proposed subsection (m)(2)(A) requires the change execution date to be included in the notices sent to the old and new PICs. As a result, both the new PIC and old PIC know the exact date from which they may or may not charge for presubscribed service. A customer may receive a bill from each PIC, but each bill should cover a partial month only. Therefore no double billing should occur. Second, §26.32(f) prohibits unauthorized charges. Accordingly, the commission agrees with AT&T and SWBT that sufficient protection exists to prevent double billing. In addition, the commission concurs with AT&T that proposed subsection (m) should not include any administrative penalty language. The commission already has general authority to impose administrative penalties for a violation of its rules (PURA §15.023 and §15.024), and §26.130 contains an enforcement provision in subsection (h).

OBF and CARE

ATIS' provided an overview of the OBF and its operation and described the CARE processes corresponding to the subsections of the proposed rule. ATIS also commented that a single standard on a particular issue is beneficial and more cost effective for companies, which also benefits consumers.

In this amendment, the commission requires that notice be given in compliance with the rule; however, the commission does not specifically require the use of CARE or any other method. The carriers have flexibility in implementing the rule. However, the commission believes in using a standardized process, and strongly encourages carriers in Texas to use a single standard.

Good faith exception

AT&T stated that a small percentage of notice transactions should be permitted to occur outside the five day window, consistent with existing commission practice in §26.54(c) of this title (relating to Service Objectives And Performance Benchmarks). According to AT&T, it will not be possible to comply with the rules' five day notification timeframe 100% of the time, and therefore the commission should adopt rule language to reflect that. AT&T proposed rule language to clarify that the requirements of the rule are met if 95% of the transactions required by the rule are executed within the five business day window applicable to that particular transaction.

AT&T suggested that the commission should recognize that notice process required by the rule may not work as intended and should thereby recognize a "good faith" defense. AT&T proposed new §26.130(m)(8) to reflect incorporation of a good faith compliance exception, which would exempt the carrier from administrative penalties upon a finding that the PIC or LSP demonstrated that "it has, in good faith and diligence, implemented and is following processes designed to meet the requirements of this rule" but that a "bona fide error...led to non-compliance."

The commission agrees with AT&T that carriers may need an exception from administrative penalties under limited circumstances. The commission understands AT&T's concerns that some cases may arise that render compliance with the five day notification timeframe difficult. Therefore, the commission adopts new subsection (m)(2)(B), which allows an LSP to comply with its notification obligation by delivering notice to the PIC using publicly available contact information maintained by the commission, if the LSP does not otherwise have the necessary contact information through a business relationship. Further, the commission notes that in assessing administrative penalties under this new subsection (m), it is appropriate to review each carrier's compliance on a case-by-case basis and among other factors, consider the number of complaints or errors compared to the number of transactions.

Comments regarding the cost of implementation

Sprint stated that the five day mandate would require Sprint's local telephone division to enhance its systems at an estimated cost of \$280,000 that would take at least 90 days to complete.

Birch noted that it would incur additional costs to provide notice upon each LEC conversion. Birch estimated its workload would increase by 400% to expand its notification capacity to provide notice to all IXC's. Birch estimated its costs would increase by over \$100,000 annually, assuming retention of its current processes and based on the quantity of known IXC's currently interfacing with Birch.

AT&T stated that it has developed direct CARE relationships with approximately 42 other providers. AT&T expressed concern that the commission's own utility directory databases reflect about 1700 registered IXC's and 500 certificated CLEC's in Texas. AT&T stated that the possible cost to the CLEC of providing the notice required under the rule may prove a barrier to efficient market entry by CLEC's. In addition, AT&T stated that the rule should not infringe upon existing information exchange mechanisms established between the parties. During the hearing, AT&T clarified that the anticipated cost issue facing CLEC's in the long run centers on transmitting information to the IXC's with whom they have not previously established a relationship under a short time frame. AT&T stated that the issue can be overcome, perhaps using a third party administrator (TPA), and urged the commission to investigate a broad-based industry solution.

With this rule, the commission, insofar as possible, seeks to mirror current industry practices as described by the parties to the proceeding. Therefore, although the commission understands parties' concerns, the commission believes that the rule does not create a new notification process requirement, but clarifies carrier responsibility in the records exchange process to protect

customers from continued billing for services that the customer sought to cancel, an issue that gave rise to numerous and continued customer complaints. Therefore, to the extent carriers experience new costs to implement the rule, the commission believes that the public interest far outweighs the cost to the carriers; however, it is appropriate to investigate this issue in a subsequent proceeding.

Issues beyond the scope of this rulemaking

Unbillable interexchange calls

Americatel recommended that the commission promulgate a new rule to address the difficulty IXC's have with unbillable calls due to insufficient customer information. Specifically, Americatel requested that the commission require: (1) that any LEC that no longer serves a particular customer indicate, upon request, which other LEC currently serves the customer; and (2) that all LECs provide billing name and address service.

AT&T stated during the hearing that Americatel raised good points about the effect on dial-around providers. According to AT&T, dial-around providers do rely on the underlying LEC to bill for them in many cases, as the LEC has the direct relationship with the end user. However, AT&T stated that there is no real way to resolve Americatel's concerns in the context of this proceeding, and the long-term resolution of the issue would involve an industry accessible line-level database.

The commission agrees with AT&T that the issue of unbillable long distance calls exceeds the scope of this proceeding. The current rulemaking seeks to prevent improper billing after a carrier change.

Third-party administrator

AT&T stated that, outside of the OBF guidelines, at present there is no other reliable alternative for a carrier to receive timely, accurate, and reliable data regarding a customer's billing information and choice of PIC. AT&T stated that the commission should undertake the process of implementing mandatory transmission of minimum customer account information. According to AT&T, a mandatory and uniform customer account information process would ensure that all service providers have timely and accurate information necessary to provide proper service and billing to their customers. AT&T stated that, due to the expedited nature of this proceeding, the commission may not be able to implement mandatory customer account information requirements in this rule. AT&T requested that the commission, in its order adopting this rule, recognize national efforts to develop mandatory, uniform minimum data elements that should be transmitted, and express the commission's intention to incorporate minimum data set requirements in its own rules as "national" requirements are developed at the Federal Communications Commission (FCC).

AT&T stated that a neutral third party administrator (TPA) would be the most efficient long-term means of ensuring that appropriate customer information is exchanged between industry participants. AT&T suggested that the commission address the issue using a TPA in a follow-on

proceeding upon completion of this initial rulemaking. AT&T requested that the commission initiate and lead a collaborative effort of interested industry players to identify and document the detailed functional requirements for TPA and minimum mandatory data exchanges and to recommend vendors to the commission. AT&T stated that, as both the largest CLEC and IXC, it would support a modification to the proposed rule that incorporated a safety valve to address notification requirements. AT&T explained that if the LEC and IXC did not have existing relationships and could not mutually agree to a solution in the time frames required by the rule, the LEC would be able to meet its notice obligations under the rule by utilizing a clearinghouse to publish notices for retrieval by the IXCs.

During the hearing, SWBT stated, and Verizon concurred, that this rulemaking is not the appropriate proceeding under which to raise the issue of an industry TPA.

The commission agrees with SWBT and Verizon that the current rulemaking is not the proper forum in which to address the issue of an industry-wide, uniform system of records exchange or use of a TPA. However the commission notes the concern that carriers participate in a uniform records exchange process for the reliable and consistent exchange of customer information. The commission believes that, in the interest of furthering customer protection against unauthorized changes in subscriber carrier and/or unauthorized billing charges, it is appropriate to investigate AT&T's concerns in a subsequent proceeding.

Customer information changes

AT&T proposed language requiring LSPs to provide timely notice of changes in customer information, such as customer name and address, each time this information changes, not just when there is change in provider.

The commission understands AT&T's concern that the lack of timely communication of changes in customer information may contribute to billing errors. However, given the expedited nature of this proceeding, the commission finds it more appropriate to address this issue in a subsequent proceeding where more thorough information can be gathered from various interested parties.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent. The commission modifies subsection (m)(1)(C) and (F) by replacing "is requesting" with "requests" to improve their readability. The commission also replaces "execute" with "implement" in subsection (m)(2)(A)(iii) to avoid possible confusion that the recipient of the notice necessarily executes the change in the switch.

This amendment is adopted under the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated (Vernon 1998, Supplement 2002) §14.002 (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically PURA §§55.301-55.308, which require the commission to adopt nondiscriminatory and competitively neutral rules to protect customers during a change in the selection of a new telecommunications utility; PURA §60.002, which grants the commission authority to implement competitive safeguards to ensure fair competition

in the Texas telecommunications market; and PURA §17.004 and §64.004, which authorize the commission to adopt rules to protect customers from being billed for services that were not authorized or provided and to ensure that a customer's choice of provider is honored.

Cross Reference to Statutes: PURA §§14.002, 17.004, 55.301-55.308, 60.002, and §64.004.

§26.130. Selection of Telecommunications Utilities.**(a) Purpose and Application.**

- (1) **Purpose.** The provisions of this section are intended to ensure that all customers in this state are protected from an unauthorized change in a customer's local or long-distance telecommunications utility.
- (2) **Application.** This section, including any references in this section to requirements in 47 Code of Federal Regulations (C.F.R.) §64.1120 and §64.1130 (changing long distance service), applies to all "telecommunications utilities," as that term is defined in §26.5 of this title (relating to Definitions). This section does not apply to an unauthorized charge unrelated to a change in preferred telecommunications utility which is addressed in §26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")).

(b) Definitions. The following words and terms when used in this section shall have the following meanings unless the context indicates otherwise:

- (1) **Authorized telecommunications utility** — Any telecommunications utility that submits a change request that is in accordance with the requirements of this section.
- (2) **Customer** — Any person, and that person's spouse, in whose name telephone service is billed, including individuals, governmental units at all levels of

government, corporate entities, and any other entity with legal capacity to be billed for telephone service.

- (3) **Executing telecommunications utility** — Any telecommunications utility that effects a request that a customer's preferred telecommunications utility be changed. A telecommunications utility may be treated as an executing telecommunications utility; however, if it is responsible for any unreasonable delays in the execution of telecommunications utility changes or for the execution of unauthorized telecommunications utility changes, including fraudulent authorizations.
- (4) **Submitting telecommunications utility** — Any telecommunications utility that requests on behalf of a customer that the customer's preferred telecommunications utility be changed.
- (5) **Unauthorized telecommunications utility** — Any telecommunications utility that submits a change request that is not in accordance with the requirements of this section.

(c) **Changes in preferred telecommunications utility.**

- (1) **Changes by a telecommunications utility.** Before a change order is processed, the submitting telecommunications utility must obtain verification from the customer that such change is desired for each affected telephone line(s) and ensure that such verification is obtained in accordance with 47 C.F.R. §64.1120. In the case of a change by written solicitation, the submitting telecommunications utility must obtain verification as specified in 47 C.F.R. §64.1130, and subsection

(d) of this section, relating to Letters of Agency. The submitting telecommunications utility shall submit a change order within 60 days after obtaining verification from the customer. The submitting telecommunications utility must maintain records of all changes, including verifications, for a period of 24 months and shall provide such records to the customer, if the customer challenges the change, and to the Public Utility Commission (commission) staff upon request. A change order must be verified by one of the following methods:

- (A) Written or electronically signed authorization from the customer in a form that meets the requirements of subsection (d) of this section. A customer shall be provided the option of using another authorization method in lieu of an electronically signed authorization.
- (B) Electronic authorization placed from the telephone number which is the subject of the change order except in exchanges where automatic recording of the automatic number identification (ANI) from the local switching system is not technically possible. The submitting telecommunications utility must:
 - (i) ensure that the electronic authorization confirms the information described in subsection (d)(3) of this section; and
 - (ii) establish one or more toll-free telephone numbers exclusively for the purpose of verifying the change so that a customer calling toll-free number(s) will reach a voice response unit or similar mechanism that records the required information regarding the

change and automatically records the ANI from the local switching system.

(C) Oral authorization by the customer for the change that meets the following requirements:

- (i) The customer's authorization shall be given to an appropriately qualified and independent third party that confirms appropriate verification data such as the customer's date of birth or mother's maiden name.
- (ii) The verification must be electronically recorded in its entirety on audio tape, a wave sound file, or other recording device that is compatible with the commission's equipment.
- (iii) The recording shall include clear and conspicuous confirmation that the customer authorized the change in telephone service provider.
- (iv) The third party verification shall elicit, at minimum, the identity of the customer, confirmation that the person on the call is authorized to make the change in service, the names of the telecommunications utilities affected by the change, the telephone number(s) to be switched, and the type of service involved.
- (v) The third party verification shall be conducted in the same language used in the sales transaction.
- (vi) Automated systems shall provide customers the option of speaking with a live person at any time during the call.

- (vii) A telecommunications utility or its sales representative initiating a three-way call or a call through an automated verification system shall drop off the call once a three-way connection has been established.
 - (viii) The independent third party shall:
 - (I) not be owned, managed, or directly controlled by the telecommunications utility or the telecommunications utility's marketing agent;
 - (II) not have financial incentive to confirm change orders; and
 - (III) operate in a location physically separate from the telecommunications utility or the telecommunications utility's marketing agent.
- (2) **Changes by customer request directly to the local exchange company.** If a customer requests a change in preferred telecommunications utility by contacting the local exchange company directly and the local exchange company is not the chosen carrier or affiliate of the chosen carrier, the verification requirements in paragraph (1) of this subsection do not apply. The local exchange company shall maintain a record of the customer's request for 24 months.
- (d) **Letters of Agency (LOA).** A written or electronically signed authorization from a customer for a change of telecommunications utility shall use a letter of agency (LOA) as specified in this subsection:

- (1) The LOA shall be a separate or easily separable document or located on a separate screen or webpage containing only the authorizing language described in paragraph (3) of this subsection for the sole purpose of authorizing the telecommunications utility to initiate a telecommunications utility change. The LOA must be signed and dated by the customer requesting the telecommunications utility change. An LOA submitted with an electronically signed authorization shall include the consumer disclosures required by the *Electronic Signatures in Global and National Commerce Act* §101(c).
- (2) The LOA shall not be combined with inducements of any kind on the same document, screen, or webpage except that the LOA may be combined with a check as specified in subparagraphs (A) and (B) of this paragraph:
 - (A) An LOA combined with a check may contain only the language set out in paragraph (3) of this subsection, and the necessary information to make the check a negotiable instrument.
 - (B) A check combined with an LOA shall not contain any promotional language or material but shall contain on the front and back of the check in easily readable, bold-faced type near the signature line, a notice similar in content to the following: "By signing this check, I am authorizing (name of the telecommunications utility) to be my new telephone service provider for (the type of service that will be provided)."
- (3) LOA language.

- (A) At a minimum, the LOA shall be printed with sufficient size and readable type to be clearly legible and shall contain clear and unambiguous language that confirms:
- (i) the customer's billing name and address and each telephone number to be covered by the preferred telecommunications utility change order;
 - (ii) the decision to change preferred carrier from the current telecommunications utility to the new telecommunications utility and identifies each;
 - (iii) that the customer designates (name of the new telecommunications utility) to act as the customer's agent for the preferred carrier change;
 - (iv) that the customer understands that only one preferred telecommunications utility may be designated for each type of service (local, intraLATA, and interLATA) for each telephone number. The LOA shall contain separate statements regarding those choices, although a separate LOA for each service is not required; and
 - (v) that the customer understands that any preferred carrier selection the customer chooses may involve a one-time charge to the customer for changing the customer's preferred telecommunications utility and that the customer may consult with the carrier as to whether a fee applies to the change.

- (B) The following LOA form meets the requirements of this subsection. Other versions may be used, but shall comply with all of the requirements of this subsection.

Customer billing name: _____
Customer billing address: _____
Customer street address: _____
City, state, zip code: _____

If applicable, name of individual legally authorized to act for customer:

Relationship to customer: _____
Telephone number of individual authorized to act for customer: _____

Only one telephone company may be designated as my preferred carrier for each type of service for each telephone number.

_____ By initialing here and signing below, I am authorizing (new telecommunications utility) to become my new telephone service provider in place of (current telecommunications utility) for **local** telephone service. I authorize (new telecommunications utility) to act as my agent to make this change happen, and direct (current telecommunications utility) to work with the new provider to make the change.

_____ By initialing here and signing below, I am authorizing (new telecommunications utility) to become my new telephone service provider in place of (current telecommunications utility) for **local toll** telephone service. I authorize (new telecommunications utility) to act as my agent to make this change happen, and direct (current telecommunications utility) to work with the new provider to make the change.

_____ By initialing here and signing below, I am authorizing (new telecommunications utility) to become my new telephone service provider in place of (current telecommunications utility) for **long distance** telephone service. I authorize (new telecommunications utility) to act as my agent to

make this change happen, and direct (current telecommunications utility) to work with the new provider to make the change.

I understand that I may be required to pay a one-time charge to switch providers and may consult with the carrier as to whether the charge will apply. If I later wish to return to my current telephone company, I may be required to pay a reconnection charge. I also understand that my new telephone company may have different calling areas, rates, and charges than my current telephone company, and I am willing to be billed accordingly.

Telephone number(s) to be changed: _____

Initial here _____ if you are listing additional telephone numbers to be changed.

I have read and understand this Letter of Agency. I am at least eighteen years of age and legally authorized to change telephone companies for services to the telephone number(s) listed above.

Signed: _____ Date _____

- (4) The LOA shall not require that a customer take some action in order to retain the customer's current telecommunications utility.
- (5) If any portion of an LOA is translated into another language, then all portions must be translated. The LOA must be translated into the same language as promotional materials, oral descriptions or instructions provided with the LOA.

(e) Notification of alleged unauthorized change.

- (1) When a customer informs an executing telecommunications utility of an alleged unauthorized telecommunications utility change, the executing

telecommunications utility shall immediately notify both the authorized and alleged unauthorized telecommunications utility of the incident.

- (2) Any telecommunications utility, executing, authorized, or alleged unauthorized, that is informed of an alleged unauthorized telecommunications utility change shall direct the customer to contact the Public Utility Commission of Texas.
- (3) The alleged unauthorized telecommunications utility shall remove all unpaid charges pending a determination of whether an unauthorized change occurred.
- (4) The alleged unauthorized telecommunications utility may challenge a complainant's allegation of an unauthorized change by notifying the complainant to file a complaint with the Public Utility Commission of Texas within 30 days. If the complainant does not file a complaint within 30 days, the unpaid charges may be reinstated.
- (5) The alleged unauthorized telecommunications utility shall take all actions within its control to facilitate the customer's prompt return to the original telecommunication utility within three business days of the customer's request.
- (6) The alleged unauthorized telecommunications utility shall also be liable to the customer for any charges assessed to change the customer from the authorized telecommunications utility to the alleged unauthorized telecommunications utility in addition to charges assessed for returning the customer to the authorized telecommunications utility.

(f) **Unauthorized changes.**

- (1) **Responsibilities of the telecommunications utility that initiated the change.** If a customer's telecommunications utility is changed without verification consistent with this section, the telecommunications utility that initiated the unauthorized change shall:
- (A) take all actions within its control to facilitate the customer's prompt return to the original telecommunication utility within three business days of the customer's request;
 - (B) pay all charges associated with returning the customer to the original telecommunications utility within five business days of the customer's request;
 - (C) provide all billing records to the original telecommunications utility related to the unauthorized change of services within ten business days of the customer's request;
 - (D) pay the original telecommunications utility any amount paid to it by the customer that would have been paid to the original telecommunications utility if the unauthorized change had not occurred, within 30 business days of the customer's request;
 - (E) return to the customer within 30 business days of the customer's request:
 - (i) any amount paid by the customer for charges incurred during the first 30 days after the date of an unauthorized change; and
 - (ii) any amount paid by the customer after the first 30 days in excess of the charges that would have been charged if the unauthorized change had not occurred; and

(F) remove all unpaid charges.

(2) **Responsibilities of the original telecommunications utility.** The original telecommunications utility shall:

(A) inform the telecommunications utility that initiated the unauthorized change of the amount that would have been charged for identical services if the unauthorized change had not occurred, within ten business days of the receipt of the billing records required under paragraph (1)(C) of this subsection;

(B) where possible, provide to the customer all benefits associated with the service, such as frequent flyer miles that would have been awarded had the unauthorized change not occurred, on receiving payment for service provided during the unauthorized change;

(C) maintain a record of customers that experienced an unauthorized change in telecommunications utilities that contains:

(i) the name of the telecommunications utility that initiated the unauthorized change;

(ii) the telephone number(s) affected by the unauthorized change;

(iii) the date the customer asked the telecommunications utility that made the unauthorized change to return the customer to the original telecommunications utility; and

(iv) the date the customer was returned to the original telecommunications utility; and

- (D) not bill the customer for any charges incurred during the first 30 days after the unauthorized change, but may bill the customer for unpaid charges incurred after the first 30 days based on what it would have charged if the unauthorized change had not occurred.

(g) **Notice of customer rights.**

- (1) Each telecommunications utility shall make available to its customers the notice set out in paragraph (3) of this subsection.
- (2) Each notice provided under paragraph (5)(A) of this subsection shall contain the name, address and telephone numbers where a customer can contact the telecommunications utility.
- (3) **Customer notice.** The notice shall state:

Selecting a Telephone Company -- Your Rights as a Customer

Telephone companies are prohibited by law from switching you from one telephone service provider to another without your permission, a practice commonly known as "slamming."

If you are slammed, Texas law requires the telephone company that slammed you to do the following:

1. Pay all charges associated with returning you to your original telephone company within five business days of your request.
2. Provide all billing records to your original telephone company within ten business days of your request.
3. Pay your original telephone company the amount you would have paid if you had not been slammed.
4. Refund to you within 30 business days any amount you paid for charges during the first 30 days after the slam and any amount more than what you would have paid your original telephone company for charges after the first 30 days following the slam.

Your original telephone company is required to provide you with all the benefits, such as frequent flyer miles, you would have normally received for your telephone use during the period in which you were slammed.

If you have been slammed, you can change your service immediately back to your original provider by calling your local telephone company. You should also report the slam by writing or calling the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1 (888) 782-8477, fax: (512) 936-7003, e-mail address: customer@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

You can prevent slamming by requesting a preferred telephone company freeze from your local telephone company. With a freeze in place, you must give formal consent to "lift" the freeze before your phone service can be changed. A freeze may apply to local toll service, long distance service, or both. The Public Utility Commission of Texas can give you more information about freezes and your rights as a customer.

- (4) The customer notice requirements in paragraph (3) of this subsection may be combined with the notice requirements of §26.32(g)(1) and (2) of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")) if all of the information required by each is in the combined notice.
- (5) **Language, distribution and timing of notice.**
 - (A) Telecommunications utilities shall send the notice to new customers at the time service is initiated, and upon customer request.
 - (B) Each telecommunications utility shall print the notice in the white pages of its telephone directories, beginning with any directories published 30 days after the effective date of this section and thereafter. The notice that

appears in the directory is not required to list the information contained in paragraph (2) of this subsection.

- (C) The notice shall be in both English and Spanish as necessary to adequately inform the customer. The commission may exempt a telecommunications utility from the Spanish requirement if the telecommunications utility shows that 10% or fewer of its customers are exclusively Spanish-speaking, and that the telecommunications utility will notify all customers through a statement in both English and Spanish that the information is available in Spanish by mail from the telecommunications utility or at the utility's offices.

(h) **Compliance and enforcement.**

- (1) **Records of customer verifications and unauthorized changes.** A telecommunications utility shall provide a copy of records maintained under the requirements of subsections (c), (d), and (f)(2)(C) of this section to the commission staff upon request.
- (2) **Administrative penalties.** If the commission finds that a telecommunications utility is in violation of this section, the commission shall order the utility to take corrective action as necessary, and the utility may be subject to administrative penalties pursuant to the Public Utility Regulatory Act (PURA) §15.023 and §15.024.
- (3) **Certificate revocation.** If the commission finds that a telecommunications utility is repeatedly and recklessly in violation of this section, and if consistent with the

public interest, the commission may suspend, restrict, deny, or revoke the registration or certificate, including an amended certificate, of the telecommunications utility, thereby denying the telecommunications utility the right to provide service in this state.

- (4) **Coordination with the office of the attorney general.** The commission shall coordinate its enforcement efforts regarding the prosecution of fraudulent, misleading, deceptive, and anticompetitive business practices with the office of the attorney general in order to ensure consistent treatment of specific alleged violations.
- (i) **Notice of identity of a customer's telecommunications utility.** Any bill for telecommunications services must contain the following information in easily-read, bold type in each bill sent to a customer. Where charges for multiple lines are included in a single bill, this information must appear on the first page of the bill if possible or displayed prominently elsewhere in the bill:
- (1) The name and telephone number of the telecommunications utility providing local exchange service if the bill is for local exchange service.
 - (2) The name and telephone number of the primary interexchange carrier if the bill is for interexchange service.
 - (3) The name and telephone number of the local exchange and interexchange providers if the local exchange provider is billing for the interexchange carrier.
- The commission may, for good cause, waive this requirement in exchanges served by incumbent local exchange companies serving 31,000 access lines or less.

- (4) A statement that customers who believe they have been slammed may contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1 (888) 782-8477, fax: (512) 936-7003, e-mail address: customer@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. This statement may be combined with the statement requirements of §26.32(g)(4) of this title if all of the information required by each is in the combined statement.

(j) **Preferred telecommunications utility freezes.**

- (1) **Purpose.** A preferred telecommunications utility freeze ("freeze") prevents a change in a customer's preferred telecommunications utility selection unless the customer gives consent to the local exchange company that implemented the freeze.
- (2) **Nondiscrimination.** All local exchange companies that offer freezes shall offer freezes on a nondiscriminatory basis to all customers regardless of the customer's telecommunications utility selection except for local telephone service.
- (3) **Type of service.** Customer information on freezes shall clearly distinguish between intraLATA and interLATA telecommunications services. The local exchange company offering a freeze shall obtain separate authorization for each service for which a freeze is requested.
- (4) **Freeze information.** All information provided by a telecommunications utility about freezes shall have the sole purpose of educating customers and providing

information in a neutral way to allow the customer to make an informed decision, and shall not market or induce the customer to request a freeze. The freeze information provided to customers shall include:

- (A) a clear, neutral explanation of what a freeze is and what services are subject to a freeze;
 - (B) instructions on lifting a freeze that make it clear that these steps are in addition to required verification for a change in preferred telecommunications utility;
 - (C) an explanation that the customer will be unable to make a change in telecommunications utility selection unless the customer lifts the freeze; and
 - (D) a statement that there is no charge to the customer to impose or lift a freeze.
- (5) **Freeze verification.** A local exchange company shall not implement a freeze unless the customer's request is verified using one of the following procedures:
- (A) A written and signed or electronically signed authorization that meets the requirements of paragraph (6) of this subsection.
 - (B) An electronic authorization placed from the telephone number on which a freeze is to be imposed. The electronic authorization shall confirm appropriate verification data such as the customer's date of birth or mother's maiden name and the information required in paragraph (6)(G) of this subsection. The local exchange company shall establish one or more toll-free telephone numbers exclusively for this purpose. Calls to the

number(s) will connect the customer to a voice response unit or similar mechanism that records the information including the originating ANI.

- (C) An appropriately qualified independent third party obtains the customer's oral authorization to submit the freeze and confirms appropriate verification data such as the customer's date of birth or mother's maiden name and the information required in paragraph (6)(G) of this subsection. This shall include clear and conspicuous confirmation that the customer authorized a freeze. The independent third party shall:

- (i) not be owned, managed, or directly controlled by the local exchange company or the local exchange company's marketing agent;
- (ii) not have financial incentive to confirm freeze requests; and
- (iii) operate in a location physically separate from the local exchange company or its marketing agent.

- (D) Any other method approved by Federal Communications Commission rule or order granting a waiver.

(6) **Written authorization.** A written freeze authorization shall:

- (A) be a separate or easily separable document with the sole purpose of imposing a freeze;
- (B) be signed and dated by the customer;
- (C) not be combined with inducements of any kind;
- (D) be completely translated into another language if any portion is translated;

- (E) be translated into the same language as any educational materials, oral descriptions, or instructions provided with the written freeze authorization;
- (F) be printed with readable type of sufficient size to be clearly legible; and
- (G) contain clear and unambiguous language that confirms:
 - (i) the customer's name, address, and telephone number(s) to be covered by the freeze;
 - (ii) the decision to impose a freeze on the telephone number(s) and the particular service with a separate statement for each service to be frozen;
 - (iii) that the customer understands that a change in telecommunications utility cannot be made unless the customer lifts the freeze; and
 - (iv) that the customer understands that there is no charge for imposing or lifting a freeze.
- (7) **Lifting freezes.** A local exchange company that executes a freeze request shall allow customers to lift a freeze by:
 - (A) written and signed or electronically signed authorization stating the customer's intent to lift a freeze;
 - (B) oral authorization stating an intent to lift a freeze confirmed by the local exchange company with appropriate confirmation verification data such as the customer's date of birth or mother's maiden name;

- (C) a three-way conference call with the local exchange company, the telecommunications utility that will provide the service, and the customer;
or
 - (D) any other method approved by Federal Communications Commission rule or order granting a waiver.
- (8) **No customer charge.** The customer shall not be charged for imposing or lifting a freeze.
- (9) **Local service freeze prohibition.** A local exchange company shall not impose a freeze on local telephone service.
- (10) **Marketing prohibition.** A local exchange company shall not initiate any marketing of its services during the process of implementing or lifting a freeze.
- (11) **Freeze records retention.** A local exchange company shall maintain records of all freezes and verifications for a period of 24 months and shall provide these records to customers and to the commission staff upon request.
- (12) **Suggested freeze information language.** Telecommunications utilities that inform customers about freezes may use the following language. Other versions may be used, but shall comply with all of the requirements of paragraph (4) of this subsection.

Preferred Telephone Company Freeze

A preferred telephone company freeze ("freeze") prevents a change in a customer's telephone provider unless you consent by contacting the local telephone company.

A freeze can protect you against "slamming" (switching your telephone service

without your permission). You can impose a freeze on your local toll, long distance service, or both. To impose a freeze, contact your local telephone company. The local telephone company must verify your freeze request by getting your written and signed authorization, electronic authorization, or through an independent third party verification. You will not be able to change your telephone provider without lifting the freeze. You may lift a freeze by giving your local telephone company a written and signed request or by calling your local telephone company with your request. You must do this in addition to providing the verification information that your new telephone provider will request. There is no charge to the customer for imposing or lifting a freeze.

- (13) **Suggested freeze authorization form.** The following form is recommended for written authorization from a customer requesting a freeze. Other versions may be used, but shall comply with all of the requirements of paragraph (6) of this subsection.

Freeze Authorization Form

Customer billing name: _____
Customer service address: _____
City, state, zip code: _____
Customer mailing address: _____
City, state, zip code: _____
Telephone number (1): _____
Telephone number (2): _____
Telephone number (3): _____

The purpose of a freeze is to prevent a change in your telephone company without your consent. A freeze is a protection against "slamming" (switching your telephone company without your permission). You can impose a freeze on either your local toll or long distance service provider, or both. If you want a freeze, you

must contact (name of local telephone company) at (phone number) to lift the freeze before you can change your service provider. You may add or lift a freeze at any time at no charge.

Please complete the following for each service for which you are requesting a freeze:

I authorize a freeze for the telephone number(s) listed above for **local toll** service.

Current preferred local toll company: _____

Customer's signature: _____

Date: _____

I authorize a freeze for the telephone number(s) listed above for **long distance** service.

Current preferred long distance company: _____

Customer's signature: _____

Date: _____

Mail this form to:

(Name of local telephone company)

(Address)

Or FAX to: (FAX number)

- (14) **Suggested freeze lift form.** The following form is recommended for written authorization to lift a freeze. Other versions may be used, but shall comply with all of the requirements of paragraph (7) of this subsection.

Freeze Lift Form

Customer billing name: _____

Customer service address: _____

City, state, zip code: _____

Customer mailing address: _____

City, state, zip code: _____

Telephone number (1): _____

Telephone number (2): _____

Telephone number (3): _____

Please complete the following for each service that you wish to lift a freeze:

I wish to remove a freeze for the telephone number(s) listed above for **local toll** service.

Current preferred local toll company: _____

Customer's signature: _____

Date: _____

I wish to remove a freeze for the telephone number(s) listed above for **long distance** service.

Current preferred long distance company: _____

Customer's signature: _____

Date: _____

Mail this form to:

(Name of local telephone company)

(Address)

Or FAX to: (FAX number)

(k) **Transferring customers from one telecommunications utility to another.**

- (1) Any telecommunications utility that will acquire customers from another telecommunications utility that will no longer provide service due to acquisition, merger, bankruptcy or any other reason, shall provide notice to every affected customer. The notice shall be in a billing insert or separate mailing at least 30 days prior to the transfer of any customer. If legal or regulatory constraints prevent sending the notice at least 30 days prior to the transfer, the notice shall be sent promptly after all legal and regulatory conditions are met. The notice shall:

- (A) identify the current and acquiring telecommunications utilities;
- (B) explain why the customer will not be able to remain with the current telecommunications utility;

- (C) explain that the customer has a choice of selecting a service provider and may select the acquiring telecommunications utility or any other telecommunications utility and that the customer may incur a charge if the customer selects another telecommunications utility;
 - (D) explain that if the customer wants another telecommunications utility, the customer should contact that telecommunication utility or the local telephone company;
 - (E) explain the time frame for the customer to make a selection and what will happen if the customer makes no selection;
 - (F) identify the effective date that customers will be transferred to the acquiring telecommunications utility;
 - (G) provide the rates and conditions of service of the acquiring telecommunications utility and how the customer will be notified of any changes;
 - (H) explain that the customer will not incur any charges associated with the transfer;
 - (I) explain whether the acquiring carrier will be responsible for handling complaints against the transferring carrier; and
 - (J) provide a toll-free telephone number for a customer to call for additional information.
- (2) The acquiring telecommunications utility shall provide the Customer Protection Division (CPD) with a copy of the notice when it is sent to customers.

- (l) **Complaints to the commission.** A customer may file a complaint with the commission's Customer Protection Division against a telecommunications utility for any reasons related to the provisions of this section.
- (1) **Customer complaint information.** CPD shall request the following information:
 - (A) the customer's name, address, and telephone number;
 - (B) a brief description of the facts of the complaint;
 - (C) a copy of the customer's and spouse's legal signature; and
 - (D) a copy of the most recent phone bill and any prior phone bill that shows the switch in carrier.
- (2) **Telecommunications utility's response to complaint.** After review of a customer's complaint, CPD shall forward the complaint to the telecommunications utility. The telecommunications utility shall respond to CPD within 21 calendar days after CPD forwards the complaint. The telecommunications utility's response shall include the following:
 - (A) all documentation related to the authorization and verification used to switch the customer's service; and
 - (B) all corrective actions taken as required by subsection (f) of this section, if the switch in service was not verified in accordance with subsections (c) and (d) of this section.
- (3) **CPD investigation.** CPD shall review all of the information related to the complaint and make a determination on whether or not the telecommunications utility complied with the requirements of this section. CPD shall inform the complainant and the alleged unauthorized telecommunications utility of the

results of the investigation and identify any additional corrective actions that may be required. CPD shall also inform the authorized telecommunications utility if there was an unauthorized change in service.

(m) **Additional requirements for changes involving certain telecommunications utilities.**

(1) **Definitions.** The following words and terms, when used in this subsection, shall have the following meanings unless the context clearly indicates otherwise.

- (A) Local service provider (LSP) — the certified telecommunications utility chosen by a customer to provide local exchange service to that customer.
- (B) Old local service provider (old LSP) — The local service provider immediately preceding the change to a new local service provider.
- (C) New local service provider (new LSP) — The local service provider from which the customer requests new service.
- (D) Primary interexchange carrier (PIC) — the provider chosen by a customer to carry that customer's toll calls. For the purposes of this subsection, any reference to primary interexchange carrier refers to both interLATA and intraLATA toll carriers.
- (E) Old primary interexchange carrier (old PIC) — The primary interexchange carrier immediately preceding the change to a new primary interexchange carrier.
- (F) New primary interexchange carrier (new PIC) — The primary interexchange carrier from which the customer requests new service or continuing service after changing local service providers.

(G) Change execution — means the date the LSP initially has knowledge of the PIC or LSP change in the switch.

(2) Contents and delivery of notice required by paragraphs (3) and (4) of this subsection.

(A) Notice shall contain at least:

- (i) the effective date of the change in the switch;
- (ii) the customer's billing name, address, and number; and
- (iii) any other information necessary to implement the change.

(B) If an LSP does not otherwise have the appropriate contact information for notifying a PIC, then the LSP's notification to the PIC shall be deemed complete upon delivery of the notice to the PIC's address, facsimile number or e-mail address listed in the appropriate Utility Directory maintained by the commission.

(3) Notification requirements for change in PIC only. The LSP shall notify the old PIC and the new PIC of the PIC change within five business days of the change execution.

(A) The new PIC shall initiate billing the customer for presubscribed services within five business days after receipt of such notice.

(B) The old PIC shall discontinue billing the customer for presubscribed services within five business days after receipt of such notice.

(4) Notification requirements for change in LSP.

- (A) Requirement of the new LSP to notify the old LSP. Within five business days of the change execution, the new LSP shall notify the old LSP of the change in the customer's LSP.
 - (B) Requirement of the new LSP to notify the new PIC. Within five business days of the change execution, the new LSP shall notify the new PIC of the customer's selection of such PIC as the customer's PIC.
 - (C) Requirement of the old LSP to notify the old PIC. Within five business days of the old LSP's receipt of notice pursuant to subparagraph (A) of this paragraph, the old LSP shall notify the old PIC that the old LSP is no longer the customer's LSP.
- (5) **Requirements of the new PIC to initiate billing customer.** If the new PIC receives notice pursuant to paragraph (4)(B) of this subsection, within five business days after receipt of such notice, the new PIC shall initiate billing the customer for presubscribed services.
- (6) **Requirements of the old PIC to discontinue billing customer.** If the old PIC receives notice pursuant to paragraph (4)(C) of this subsection that the old LSP is no longer the customer's LSP, the old PIC shall discontinue billing the customer for presubscribed services within seven business days after receipt of such notice, unless the new LSP notifies the old PIC that it is the new PIC pursuant to paragraph (4)(B) of this subsection.
- (7) Compliance with this subsection is required by January 1, 2003.

- (n) **Reporting requirement.** Each telecommunications utility shall file a semiannual slamming report with the commission's Central Records in the assigned project number as required by paragraphs (1) and (2) of this subsection. A project number will be assigned each calendar year for this report.
- (1) The report shall use the format and information required by 47 C.F.R. §64.1180 containing only Texas-specific data.
- (2) Reports shall be submitted on August 31 (covering January 1 through June 30) and February 28 (covering July 1 through December 31).

This agency hereby certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §26.130, relating to Selection of Telecommunications Utilities, is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 26th DAY OF SEPTEMBER 2002.

PUBLIC UTILITY COMMISSION OF TEXAS

Rebecca Klein, Chairman

Brett A. Perlman, Commissioner